Supreme Court, U.S.
FILED

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No. 00-

IN THE
Supreme Court of the United States

MEMPHIS HOUSING AUTHORITY,

Petitioner,

v.

TARA THOMPSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

APPENDIX

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APPENDIX

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IN THE SUPREME COURT OF TENNESSEE AT JACKSON

November 16, 2000 Session Heard at Jackson[1]

MEMPHIS HOUSING AUTHORITY v. TARA THOMPSON

Appeal by permission from the Court of Appeals, Western Section

Circuit Court for Shelby County

No. 94425-T.D.-7 Robert A. Lanier, Judge

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[1] Oral argument was heard in this case on November 16, 2000, in Jackson, Madison County, Tennessee, as part of this Court's S.C.A.L.E.S. (Supreme Court Advancing Legal Education for Students) project.

No. W1998-00108-SC-R11-CV - Filed February 20, 2001

The appellee, Memphis Housing Authority brought this unlawful detainer action seeking to evict the appellant, tenant Tara Thompson, after drugs were discovered on the father of her child while he was inside her apartment. The trial court granted summary judgment to the appellee, and the Court of Appeals affirmed, finding that the lease agreement imposes strict liability upon the appellant for the drug-related criminal activity of her "guests and other persons under her control." We granted permission to appeal to consider the appropriate standard that applies when

a public housing authority seeks to evict a tenant for drug-related criminal activity. This is an issue of first impression in Tennessee. After due consideration, we hold that the lease agreement imposes strict liability for drug-related criminal activity engaged in by the tenant or any household member but permits eviction for the drug related criminal activity of "guests and other persons under [the tenant's] control"only if the tenant knew or should have known of the drug-related criminal activity and failed to take reasonable steps to halt or prevent the illegal activity. Accordingly, we reverse the judgment of the Court of Appeals and remand this case to the trial court for reconsideration of the appellee's motion for summary judgment under the legal standard announced herein.

Tenn. R. App. P. 11; Judgment of the Court of Appeals Reversed;
Case Remanded to Trial Court

FRANK F. DROWOTA, III, J., delivered the opinion of the court, in which E. RILEY ANDERSON, C.J., ADOLPHO A. BIRCH, JR., JANICE M. HOLDER, and WILLIAM M. BARKER, JJ., joined.

Webb M. Brewer, Debra N. Brittenum, Margaret Barr-Myers, Nancy Percer Kessler, and Brenda Oates-Williams, Memphis, Tennessee, for the appellant, Tara Thompson.

Gregory L. Perry, Memphis, Tennessee, for the appellee, Memphis Housing Authority.

Drake Holliday, Legal Aid Society of Middle Tennessee, Nashville, Tennessee and David Kozlowski, Legal Services of South Central Tennessee, Incorporated, for the Amicus Curiae, Tennessee Association of Legal Services.

OPINION

Background

On October 17, 1997, the appellant, Tara Thompson, executed a lease and began residing in an apartment in the Fowler Homes Housing Development ("Fowler Homes"). Fowler Homes is owned and operated by appellee Memphis Housing Authority ("MHA"), a federally funded public housing authority within the meaning of the United States Housing Act of 1937, as amended, 42 U.S.C. § 1437 et seq. ("Federal Housing Act"). A federal statute requires that public housing authorities, such as MHA, use leases that

> provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public

> housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control shall be cause for termination of tenancy.

42 U.S.C. § 1437d(l)(6) (Supp. 2000). Attempting to comply with this federal statute, MHA included provisions in its lease agreements that require a tenant

> [t]o refrain from and cause household members, guests, or persons under the resident's control from engaging in any criminal activity or unlawful activity that threatens the health, safety or right to a peaceful enjoyment of the Memphis Housing Authority's public housing premises by other residents or employees of the Memphis Housing Authority which includes but is not

limited to any drug-related criminal activity on or off the premises.

The lease further provides that cause for termination exists if "the resident, any members of the household, a guest of other person under the resident's control" engages in "any drug-related criminal activity on or off the premises." The lease agreement Thompson signed contained these provisions.

Thompson was pregnant with her third child when she moved into her Fowler Homes apartment in October of 1997. The record reflects that Tallen Williams, the father of Thompson's unborn child, was incarcerated in the Shelby County jail in December of 1997 and that Thompson visited Williams on three occasions. During these visits, Williams told Thompson that he had been jailed for violating his probation by failing to perform community service. Williams did not tell Thompson why he initially had

been placed on probation, and Thompson did not inquire further into Williams' criminal record.

The record reflects that Thompson's and Williams' child was born on January 13, 1998. Less than one month later, on February 6, 1998, Thompson saw Williams "hanging out with his friends" at Fowler Homes. Thompson asked Williams to come to her apartment and care for her three children, including his three-week-old baby, while she did laundry. Williams agreed. While Williams was babysitting in Thompson's apartment, officers of the Memphis Police Department executed a search warrant, raided the apartment, found 0.4 grams of cocaine in Williams' possession, and arrested him. Williams told the police that the drugs belonged to him, and Thompson was not questioned or detained in connection with Williams' arrest.

One week later, however, on February 13, 1998, MHA provided Thompson a written "Three Day Notice of Termination of Lease" which advised that

her lease was being terminated based upon her violation of Section 7, paragraphs L through N of her lease prohibiting drug-related criminal activity on the premises. When Thompson refused to vacate the premises, MHA brought this unlawful detainer action.

This action initially was tried in General Sessions Court where a judgment for possession was entered in favor of MHA. Thompson appealed the judgment to the Circuit Court, and MHA moved for summary judgment contending, based upon the undisputed facts, that it was entitled to terminate Thompson's lease because she had violated the lease provisions prohibiting drug-related criminal activity on the premises. Thompson argued that termination of her lease was not appropriate because she had no knowledge of Williams' illegal drug activity until after his arrest.

The trial court initially denied MHA's motion for summary judgment, stating,

> while the contract places a heavy burden upon a tenant to take an active role in preventing the use of the premises by guests of the tenant who are engaged in illegal or drug-related activity, an entirely innocent tenant, whose ignorance of the activity is not due to indifference or lack of precautions on his or her part, should not be a basis for eviction.

In denying the motion for summary judgment, the trial court emphasized that it had considered only the written stipulation of facts and had not considered Thompson's deposition which also was in the file.

MHA filed a motion asking the trial court to reconsider its denial of summary judgment. As grounds for the motion, MHA argued that the trial court had erred by refusing to consider Thompson's deposition. The trial court agreed and granted MHA's

motion for reconsideration. Upon considering Thompson's deposition, the written stipulation of facts and "the entire record," the trial court granted the motion for summary judgment and issued a writ of possession in favor of MHA.

Thompson appealed the trial court's decision, and she argued before the Western Section Court of Appeals that the trial court erred by granting summary judgment to MHA because she had no prior knowledge of Williams' illegal drug activity, and further, she had no ability to control Williams' conduct. The Court of Appeals rejected Thompson's argument and affirmed summary judgment in favor of MHA. In so holding, the Court of Appeals stated:

> [T]he lease provisions placed upon Thompson the affirmative obligation to ensure that her guests did not engage in drug-related criminal activity while in her apartment. In light of the

affirmative nature of this obligation, Thompson's actual or constructive knowledge of Williams' drug-related criminal activity was irrelevant. Regardless of her knowledge of Williams drug activity, under the terms of her lease, Thompson became responsible for such activity once she granted Williams access to her apartment. Even when viewed in the light most favorable to Thompson, the evidence presented below demonstrated that Thompson violated her lease with MHA when she granted Williams access to her apartment and subsequently failed to cause Williams to refrain from possessing illegal drugs while in the apartment. Under these circumstances, MHA had the right to

enforce the lease provisions evicting Thompson.

We granted Thompson's application for permission to appeal to determine whether these federally mandated lease provisions allow a public housing authority to evict a tenant based upon the drug-related criminal activities of a "guest or other person under the tenant's control" regardless of whether the tenant had knowledge of the illegal activity. While the lease provisions impose strict liability for the drug-related criminal activity of the tenant or a household member, we conclude that eviction is appropriate based upon the drug-related criminal activity of a "guest or other person under the tenant's control," only if the tenant knew or should have known of the illegal drug-related activity and failed to take reasonable steps to prevent or halt it. Accordingly, we reverse the judgment of the Court of Appeals and remand this case to the trial court for

reconsideration of the motion for summary judgment under the legal standard announced herein.

Standard of Review

Summary judgment is appropriate where no genuine issues of material fact exist and the movant is entitled to judgment as a matter of law. See Tenn. R. Civ. P. 56.04. We must take the strongest view of the evidence in favor of the non-movant, allow all reasonable inferences, and discard all countervailing evidence. See Byrd v. Hall, 847 S.W.2d 208, 210-11 (Tenn. 1993). Our review concerns a question of law only. Therefore, the trial court's judgment is not presumed correct, and our review is de novo on the record before this Court. See Miller v. Willbanks, 8 S.W.3d 607, 608-09 (Tenn. 1999); Bain v. Wells, 936 S.W.2d 618, 622 (Tenn. 1997).

Standard for Eviction: Strict Liability or Knowledge?

As stated, the issue in this appeal arises from a lease provision that is mandated by federal law;

therefore, we begin our analysis by considering the relevant federal law. The Federal Housing Act is intended to assist state and local governments in providing affordable housing to low income families. See Pub. L. No. 75-412, 50 Stat. 888 (1937); 42 U.S.C. § 1437(a); Punishing the Innocent: No-Fault Eviction of Public Housing Tenants for the Actions of Third Parties, 76 Tex. L. Rev. 1495, 1498 (1998). Under the Act, responsibility for managing, maintaining, and operating public housing developments is vested in local public housing agencies, such as MHA, rather than the federal government. See 42 U.S.C. § 1437(a)(1)(c). To obtain federal funding, however, local public housing agencies must agree to abide by federal law and by federal regulations, promulgated by the Department of Housing and Urban Development ("HUD"). See generally 42 U.S.C. § 1437(g).

Concerned about the prevalence of crime in public housing developments, Congress passed the

Cranston-Gonzalez National Affordable Housing Act of 1990. See Pub. L. 101-625. This legislation required all public housing agencies to include in their leases the following provision:

> any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or near such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.

42 U.S.C. § 1437(d)(l)(6). The scope of this statute was broadened further by a 1996 amendment which replaced the phrase "on or near such premises," with

the phrase "on or off such premises." See Pub. L. 104-20 § 9(a)(1); 42 U.S.C. § 1437(d)(l)(6).

To implement this statutory mandate, HUD promulgated regulations that require public housing authorities to include a provision in their leases

> [t]o assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in . . . any drug-related criminal activity on or near such premises. Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit.

24 C.F.R. § 966.4(f)(12)(i)(B). Another regulation similarly provides that any drug-related criminal activity on or off the premises "by the tenant, any member of the household, a guest, or another person

under the tenant's control, shall be cause for termination of tenancy." 24 C.F.R. § 966.4(l)(2)(ii)(B). Consistent with these regulations, in 1996 the Clinton administration announced a "One Strike and You're Out" policy which encouraged local public housing authorities to take full advantage of these federal statutes to promote community safety in public housing. See 76 Tex. L. Rev. at 1503.

Attempting to comply with these federal laws, MHA has included the following provisions in its leases:

> 7. OBLIGATIONS OF RESIDENT
>
> Resident Agrees:
>
> * * * *
>
> L. To conduct himself/herself and

cause other household members to conduct themselves in a manner which will not disturb any public housing Resident's peaceful enjoyment of their accommodations and which will be conducive to maintaining the Memphis Housing Authority public housing developments in a decent, safe, sanitary and crime-free environment;

M. To refrain from illegal or other activity

which impairs the physical or social environment of the development, and cause other persons who are on the premises with the resident's consent to refrain from illegal or other activity which impairs the physical or social environment of the development or interferes with the health, safety or right of peaceful enjoyment of the premises by other residents;

N. To refrain from and cause household members, guests, or persons under the resident's control from engaging in any criminal activity or unlawful activity that threatens the health, safety or right to a peaceful enjoyment of the Memphis Housing Authority's public housing premises by other residents or employees of the Memphis Housing Authority which includes but is not limited to any drug-

related criminal activity on or off the premises;

The term "drug-related criminal activity" means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute, or use, of a controlled substance (as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802), or of any other illicit drug).

The term "criminal activity" shall mean an act that

violates city, state, or federal criminal laws.

* * * *

15. TERMINATION OF THE LEASE

Management shall not terminate or refuse to renew the lease other than for serious or repeated violations of the material terms of the lease, the Resident Handbook, or MHA Statement of Policies, such as failure to make payment due under the lease or to fulfill the

resident's obligations set forth in Section 7, or for other good cause. The resident agrees that the violation of any of the obligations of residents A thru W is a serious violation of a material term of the lease, and is good cause for termination of the lease.

Either of the following types of criminal activity by the resident; any members of the household, a guest, or other person under the resident's

control, shall be cause for termination of tenancy and such termination shall be excluded from resident's right to a grievance hearing.

* * * *

B. Any drug-related criminal activity on or off the premises or alcohol abuse which interferes with the health, safety or right to peaceful enjoyment of the resident. The resident agrees that any drug-related criminal

activity on or off the premises interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents and is not conducive to maintaining Memphis Housing Authority Public Housing Development in a decent, safe, sanitary and crime-free environment and creates a threat to the health and safety of other residents.

The parties to this appeal sharply disagree as to the appropriate standard for determining whether eviction is proper under these lease provisions. Thompson and amicus curiae Tennessee Association of Legal Services argue that termination of a tenancy is proper only if a tenant knew or should have known of the drug-related criminal activity and failed to take appropriate action to prevent or halt the criminal activity. In contrast, MHA asserts that the lease provisions impose strict liability, meaning that termination of a tenancy and eviction are appropriate even if a tenant had no knowledge of the illegal activity.

No Tennessee court has considered this precise issue.[2] Courts in other jurisdictions are split on the

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[2] In framing their argument, both the appellant and the amicus curiae rely upon unreported intermediate appellate court decisions that construe similar lease provisions addressing generally disruptive or criminal conduct. However, these decisions are not particularly instructive since the language of both the lease

issue. Some courts have adopted the standard advanced by MHA and hold that such lease provisions impose strict liability for all drug-related criminal activity. See City of San Francisco Hous. Auth. v. Guillory, 49 Cal. Rptr.2d 367 (App. Dep't Super. Ct. 1995); Housing Auth. of New Orleans v. Green, 657 So.2d 552 (La. Ct. App. 1995); Ann Arbor Hous. Comm'n v. Wells, 618 N.W.2d 43 (Mich. Ct. App. 2000); Minneapolis Pub. Hous. Auth. v. Lor, 591 N.W.2d 700 (Minn. 1999); Syracuse Hous. Auth. v. Boule, 701 N.Y.S.2d 541 (App. Div. 1999). Emphasizing that the federal statute mandating these lease provisions does not contain an explicit knowledge requirement, these courts have refused to imply a knowledge requirement by the statute's use of the phrase "under the tenant's control." According to the Louisiana Court of Appeals:

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provisions and the federal statutes from which they are derived are different.

> knowledge requirements in statutes are so common in general and so obviously relevant to this particular issue that we reject the argument that Congress either failed inadvertently to include a knowledge requirement, somehow included it by implication, or said "control" but really meant knowledge.

Green, 657 So.2d at 554. The Michigan Court of Appeals concluded that the federal statute

> evinces a clear congressional intent to authorize termination of tenancy regardless of whether the tenant was aware that his household member or guest was selling, manufacturing, distributing, or using drugs.

Wells, 618 N.W.2d at 47 (quoting Rucker v. Davis, 203 F.3d 627, 637 (9th Cir. 2000), rev'd en banc Rucker v. Davis, Nos. 98-16322 & 98-16542, 2001 WL 55724 (9th Cir. 2001) (en banc)).

Moreover, these courts stress that regardless of their origin in federal law, provisions in public housing leases are contract terms to which the ordinary rules of contract interpretation apply. One such rule is that clear and unambiguous terms must be enforced without further interpretation, even if enforcement produces harsh results. See Guillory, 49 Cal. Rptr.2d at 369; Lor, 591 N.W.2d at 704. Finding no ambiguity in the phrase "any drug-related criminal activity," these courts conclude that the provision imposes strict liability and opine that the scope of this phrase is the same as the phrase "any drug related criminal activity including that of which the tenant is unaware." Wells, 618 N.W.2d at 47. Exemplifying this perspective, the California court observed that by

mandating such lease provisions "Congress enacted a straight-forward practical method of dealing with a serious public safety problem." Guillory, 49 Cal. Rptr.2d at 371; see also Boule, 701 N.Y.S.2d at 542.

While generally agreeing that clear and unambiguous lease provisions must be given their plain and ordinary meaning, several other courts have determined that these particular federally mandated lease provisions are not clear and unambiguous. Adopting the position advocated by Thompson and Amicus Curiae, these courts have construed the ambiguous provisions to permit eviction only if the tenant knew or should have known of the drug-related criminal activity and failed to prevent or halt it. See Rucker v. Davis, Nos. 98-16322 & 98-16542, 2001 WL 55724 (9th Cir. 2001) (en banc); Kimball Hill Management Co. v. Roper, 733 N.E.2d 458 (Ill. App. Ct. 2000); American Apartment Management Co. Inc. v. Phillips, 653 N.E.2d 834 (Ill. App. Ct. 1995); Diversified Realty Group, Inc. v. Davis, 628 N.E.2d

1082 (Ill. App. Ct. 1993); Charlotte Hous. Auth. v. Patterson, 464 S.E.2d 68 (N.C. Ct. App. 1995); Delaware County Hous. Auth. v. Bishop, 749 A.2d 997 (Pa. Commw. Ct. 2000). Noting that the term "control," used in the phrase "under the tenant's control," is not defined, these courts consider the legislative history of the federal statute from which these lease provisions were taken almost verbatim. See Patterson, 464 S.E.2d at 71; Bishop, 749 A.2d at 1002. Of particular importance is the congressional committee report that accompanied the 1990 Cranston-Gonzalez Affordable Housing Act, which stated:

> The Committee anticipates that each case will be judged on its individual merits and will require the wise exercise of humane judgment by the [public housing authority] and the eviction court. For example, eviction

> would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken reasonable steps under the circumstances to prevent the activity.

S. Rep. No. 316, 101st Cong., 2d Sess. 179 (1990), reprinted in 1990 U.S.C.C.A.N. 5763, 5941; see also Patterson, 464 S.E.2d at 71; Bishop, 749 A.2d at 1002 (quoting and discussing the committee's report). The North Carolina Court of Appeals described this committee report as

> clearly expressed legislative intent that eviction is appropriate only if the tenant is personally at fault for a breach of the lease, i.e., if the tenant had knowledge of the criminal activities, or if the tenant had taken no reasonable steps under the circumstances to prevent the activity.

> The legislative history makes clear that Congress did not intend the statute to impose a type of strict liability whereby the tenant is responsible for all criminal acts regardless of her knowledge or ability to control them.

Patterson, 464 S.E.2d at 557. A majority of the United States Court of Appeals for the Ninth Circuit has also concluded that by this committee report Congress specifically rejected the notion that a public housing authority's discretion is so broad that it extends to the eviction of innocent tenants. See Rucker, 2001 WL 55724 at *10.

Sometimes cited as supporting the view that the statute does not impose strict liability is the HUD regulation which instructs:

> In deciding to evict for criminal activity, the [public housing authority] shall have discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity.

24 C.F.R. § 966.4(l)(5)(i); see also 76 Tex. L. Rev. at 1520 (asserting that the regulation permits the public housing authority to exercise discretion, which indicates that the lease provisions do not impose strict liability).

After carefully reviewing these conflicting decisions, we consider the threshold inquiry to be whether or not the language of the lease provides a clear answer to the question presented. In Tennessee,

when construing a lease courts can not make a new contract for the parties. See Cain Partnership Ltd. v. Pioneer Inv. Services Co., 914 S.W.2d 452, 462 (Tenn. 1996). Where the wording of the lease is unambiguous, the clear language must be interpreted and enforced as written even though it contains terms which may be considered harsh and unjust by a court. Id. at 464. However, ambiguous lease provisions must be construed against the party drafting the lease. Id. at 462; see also Spiegel v. Thomas, Mann & Smith, P.C., 811 S.W.2d 528, 531 (Tenn. 1991); Marshall v. Jackson & Jones Oils, Inc., 20 S.W.3d 678, 682 (Tenn. Ct. App. 1999).

The lease provisions at issue in this appeal require Thompson

> [t]o refrain from and cause household members, guests, or persons under the resident's control from engaging in any criminal activity or unlawful activity . .

> . which includes but is not limited to any drug-related criminal activity on or off the premises.

The lease further provides that "[a]ny drug-related criminal activity on or off the premises" by Thompson, "any members of the household, a guest, or other person under the resident's control, shall be cause for termination of tenancy." These lease provisions refer to four separate categories of people: (1) the resident (Thompson); (2) household members; and (3) guests or (4) other persons under the resident's control. The phrase, "under the resident's control," relates only to the last two categories – guests or other persons. Although other courts have applied a single standard to all four categories, we conclude that applying a single standard is not consistent with the plain language of either the lease provisions in this case or the federal statutes from which they are derived. While both the language of this lease, and the federal

statute from which it is derived, clearly impose strict liability upon the resident or household members for engaging in drug-related criminal activity, the language is not clear with respect to the standard that applies to a guest or other person under the resident's control. The phrase "under the resident's control" is not defined in the lease or in the federal statute. In addition, as previously stated, there is a split of authority among other jurisdictions as to the meaning of the phrase as it is used in the federal statute and the lease provisions derived from that statute. Where language in a contract or statute is susceptible of more than one reasonable interpretation the language is ambiguous. See Carter v. State, 952 S.W.2d 417, 419 (Tenn. 1997) ("The mere fact that this [statutory] phrase is reasonably interpreted either way makes it ambiguous. Where the language of a legislative provision is unclear, the Court should look behind the face of the statute to determine the legislature's intent."); Tata v. Nichols, 848 S.W.2d 649, 650-51

(Tenn. 1993) (applying this rule to an insurance contract and finding ambiguity because the term had been interpreted differently by various other jurisdictions considering the issue). This portion of the lease provision is ambiguous. As other courts have found, both the legislative history and the HUD regulation suggest that this ambiguous phrase should be interpreted as allowing evictions only if the tenant knew or should have known of the drug-related criminal activity of a guest or other person under the tenant's control. See Patterson, 464 S.E.2d at 71; Bishop, 749 A.2d at 1002. The congressional committee report specifically declares, "[f]or example, eviction would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken reasonable steps under the circumstances to prevent the activity." (Emphasis added.) By allowing the public housing authority to consider the involvement or participation of family

members, the HUD regulation also suggests a knowledge requirement.

Finally, while a standard of strict liability is sensible when it is applied to the resident or household members, such a standard yields absurd results when it is applied to guests or other persons.[3] For example, eviction would be possible where a salesman or a pizza delivery person enters a public housing tenant's apartment in possession of drugs, even though the tenant had no knowledge or information about the drug-related criminal activity. We do not believe Congress intended such an absurd result.

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[3] A tenant will have no trouble ascertaining the identities of those persons for whom the tenant will be held strictly liable if all public housing authorities use leases similar to this one which requires the tenant to list all household members by relationship, age, and social security number and obligates the tenant to notify the public housing authority within ten days of the date on which the composition of the family changes.

Accordingly, we conclude that neither federal law nor the lease provisions impose a standard of strict liability for the drug-related criminal activities of Thompson's guests or other persons under her control.[4] The phrase "under the resident's control" permits eviction only if MHA establishes that Thompson knew or should have known of the drug-related criminal activity "of a guest or other person"and failed to take reasonable steps to prevent or halt it. Not only is this construction consistent with federal legislative history and HUD regulations, it is consistent with Tennessee law which requires that

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[4]Having so concluded, we need not address Thompson's assertion that a standard of strict liability for the drug-related criminal activity of others would violate her constitutional substantive due process right. It is well-established that courts decide constitutional issues only when necessary. See State v. Burdin, 924 S.W.2d 82, 87 (Tenn. 1996); Owens v. State, 908 S.W.2d 923, 926 (Tenn. 1995).

ambiguous terms in a lease be construed against the drafter of the instrument, in this case MHA.

Under this standard, both the public housing authority and the eviction court will be required to carefully consider the facts when an eviction is sought because of the drug-related criminal activities of a guest or other person under the tenant's control. In determining whether a tenant knew or should have known of the illegal conduct, courts should consider whether the guest or other person had a prior criminal record and, if so, whether the tenant had notice of the prior criminal record. As the Massachusetts Supreme Court held, a tenant's duty to take reasonable steps to prevent or halt illegal activity may on occasion require the tenant to seek outside intervention from social services agencies or law enforcement officials. See Spence v. Gormley, 439 N.E.2d 741, 265 (Mass. 1982). When a tenant has taken such measures, however, the tenant should not be held responsible for illegal activities that nevertheless occur. Id.

a.1.1 Conclusion

Having articulated the appropriate standard, we reverse the decision of the Court of Appeals and remand to the trial court for consideration of MHA's motion for summary judgment under the legal standard announced herein.

FRANK F. DROWOTA, III, JUSTICE

IN THE COURT OF APPEALS OF TENNESSEE, AT JACKSON

MEMPHIS HOUSING AUTHORITY,)
)
Shelby County Circuit Court
)
No. 94425 T.D.
Plaintiff/Appellee.)
)
VS.)
C.A. No. 02A01-9812-CV-00356
)
TARA THOMPSON,)
)

FILED
July 29, 1999

Defendant/Appellant.)

)

From the Circuit Court of Shelby County at Memphis.

Honorable Robert A. Lanier, Judge

Brenda Oates-Williams,
MEMPHIS AREA LEGAL SERVICES, INC.,
Memphis, Tennessee
Attorney for Defendant/Appellant.

Gregory L. Perry, Memphis, Tennessee
Attorney for Plaintiff/Appellee.

OPINION FILED: **July 29, 1999**

AFFIRMED AND REMANDED

FARMER, J.

CRAWFORD, P.J., W.S.: (Concurs)

HIGHERS, J.: (Concurs)

In this unlawful detainer action, Defendant Tara Thompson appeals the trial court's judgment granting the motion for summary judgment filed by Plaintiff/Appellee Memphis Housing Authority (MHA) and issuing a writ of possession in favor of MHA. We affirm the trial court's judgment based upon our conclusion that MHA properly terminated Thompson's lease after she violated the lease provisions by failing to cause one of her guests to refrain from engaging in drug-related criminal activity in her apartment.

MHA is a public housing authority within the meaning of the United States Housing Act. *See* 42 U.S.C.A. §§ 1437--1440 (West 1994 & Supp. 1999). MHA receives much of its funding through a subsidy from the United States Department of Housing and Urban Development (HUD), and its operation is governed by federal law and by HUD rules and regulations.

In 1988 and again in 1990, the United States Congress amended the Housing Act to address the problem of illegal drug activity and other criminal activity on public housing premises. As amended, the Act required public housing authorities to use leases which provided that

> any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any

> drug-related criminal activity on or near such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.

42 U.S.C.A. § 1437d(l)(5) (West 1994). Congress again amended the Act in 1996 to refer to any drug-related criminal activity "on or ***off*** such premises" rather than "on or ***near*** such premises." 42 U.S.C.A. § 1437d(l)(6) (West Supp. 1999) (emphases added).

Pursuant to Congress's directive, MHA required its public housing residents to sign lease agreements containing the following provisions:

7. OBLIGATIONS OF RESIDENT

Resident Agrees:

M. To refrain from illegal or other activity which impairs the physical or social environment of the development, and cause other persons who are on the premises with the resident's consent to refrain from illegal or other activity which impairs the physical or social environment of the development or interferes with the health, safety or right of peaceful enjoyment of the premises by other residents.

N. To refrain from and cause household members, guests or persons under the resident's control [to refrain] from engaging in any criminal activity or unlawful activity that threatens the health, safety or right to a peaceful enjoyment of [MHA's] public housing premises by other residents or employees of [MHA] which includes but is not limited to any drug related criminal activity on or off the premises;

15. TERMINATION OF THE LEASE Management shall not terminate or refuse to renew the lease other than for serious or repeated violations of the material terms of the lease, . . . such as failure to make payment due under the lease or to fulfill the resident's obligations set forth in Section 7, or for other good cause. The resident agrees that the violation of any of the obligation of residents A thru W is a serious violation of a material term of the lease, and is good cause for termination of

the lease.

Either of the following types of criminal activity by the resident; any members of the household, a guest, or other person under the resident's control, shall be cause for termination of tenancy and such termination shall be excluded from resident's right to a grievance hearing.

A. Any criminal activity or unlawful activity that threatens the health, safety or right to peaceful enjoyment of the premises of the residents or

employees of [MHA].

B. Any drug related criminal activity on or off the premises or alcohol abuse which interferes with the health, safety or right to peaceful enjoyment of the resident. The resident agrees that any drug related criminal activity on or off the premises interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents and is not conducive to maintaining [MHA] Public Housing Development in a decent, safe, sanitary and crime-free environment

> and creates a threat to the health and safety of other residents.

Tara Thompson and her three children live in MHA's Fowler Homes Housing Development. In order to obtain housing in Fowler Homes, Thompson signed a Dwelling Lease and Lease Addendum with MHA that contained the foregoing provisions.

On February 6, 1998, Thompson saw Tallen Williams, the father of her youngest child, "hanging out" at Fowler Homes. At Thompson's request, Williams agreed to go to Thompson's apartment to watch her children while she went to do laundry. While Williams was in Thompson's apartment, officers of the Memphis Police Department, acting pursuant to a search warrant, raided the apartment, found 0.4 grams of cocaine in Williams' possession, and arrested him.

Thompson had no prior knowledge of Williams' illegal drug activity. Thompson knew that Williams had been jailed in December 1997 for violating the terms of his probation, but Thompson did not know the nature of the underlying offense for which Williams was serving probation. Thompson did not ask Williams why he was on probation, and Williams did not volunteer this information.

Despite Thompson's lack of prior knowledge of Williams' illegal drug activity, MHA notified Thompson that it was terminating her lease based upon her violation of the lease provisions prohibiting drug-related criminal activity on the premises. When Thompson failed to vacate the apartment, MHA brought this unlawful detainer action against her.

This action initially was tried in the General Sessions Court, where a judgment for possession was entered in favor of MHA. After Thompson appealed the judgment to the Circuit Court,

MHA moved for summary judgment, contending that, as a matter of law, it was entitled to terminate Thompson's lease based upon her violation of the lease provisions prohibiting drug-related criminal activity on the premises. The trial court initially denied MHA's motion; however, upon MHA's motion for reconsideration, the trial court granted MHA's motion for summary judgment and issued a writ of possession in favor of MHA.

On appeal, Thompson contends that the trial court erred in entering a judgment in favor of MHA when the record contained no evidence that Thompson was at fault in allowing Williams to possess illegal drugs in her apartment. Specifically, Thompson asserts that the record contained no evidence that she either knew about Williams' illegal drug activity or had the ability to control Williams' conduct.

We conclude that this argument lacks merit. In construing similar lease provisions, courts in other jurisdictions have ruled that a public housing

authority may evict a tenant without presenting proof that the tenant knew of or had the ability to foresee or control the illegal activity of a household member or guest. In ***City of South San Francisco Housing Authority v. Guillory***, 49 Cal. Rptr. 2d 367, 369 (Cal. App. Dep't Super. Ct. 1995), the lease provision at issue required the tenants to "assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in . . . [a]ny drug-related criminal activity on or near the premises." Citing this provision, the housing authority filed an unlawful detainer action against the tenants after a lawful search of their apartment revealed narcotics in their son's bedroom. In pursuing its unlawful detainer action, the housing authority stipulated that it could produce no evidence that the tenants "knew of, controlled, acquiesced in, or had reason to know" of their son's possession of narcotics. ***Guillory***, 49 Cal. Rptr. 2d at 369. Despite this stipulation, the trial court entered a judgment for the

housing authority, ruling that it properly terminated the tenants' lease "based solely on the fact that narcotics were found in the apartment." ***Id.*** at 370.

In affirming the trial court's judgment, the appellate court first rejected the tenants' argument that the subject lease provision was ambiguous:

> This argument has no merit. The language of the lease with respect to drug use and possession on public housing premises is clear and unambiguous. The terms of paragraph 11(o) of the lease have a plain and obvious meaning. By signing the lease with

[the housing authority], [the tenants] agreed to assure that no drugs would be possessed or used on their premises by any member of their household. There is no ambiguity in what [the tenants] were obligated to do, particularly when paragraph 11(o) of the lease is read in conjunction with the other lease provisions which also clearly and explicitly prohibit drug-related activity. The lease between [the tenants] and [the housing authority] is

> therefore a valid contract. The facts as stipulated in the court below demonstrate [the tenants] violated that contract. [The housing authority], acting pursuant to the contract, acted within its lawful authority in enforcing the contract by evicting [the tenants].

Guillory, 49 Cal. Rptr. 2d at 370. The appellate court also rejected the tenants' argument that they could not be evicted unless they had knowledge of or the ability to foresee their son's criminal conduct:

> [The tenants'] argument overlooks the fact that [they] were evicted for failure to assure that no drug-related criminal activity occur in their premises. [The tenants] were not evicted for the conduct of [their son]. The eviction was based on [the tenants'] failure to assure that illegal drug-related conduct did not take place in their household.

Id. at 372.

In ***Housing Authority of New Orleans v. Green***, 657 So. 2d 552, 553 (La. Ct. App.), ***writ denied***, 661 So. 2d 1355 (La. 1995), ***cert.***

denied, 517 U.S. 1169 (1996), the lease provision at issue prohibited the tenant, any member of the tenant's household, or a guest or other person under the tenant's control from engaging in criminal activity, including drug-related criminal activity, on or near the housing authority's premises. The housing authority brought eviction proceedings against the tenant after illegal drugs were found in her apartment. The proof at trial established that the drugs belonged to an acquaintance of the tenant's daughter. Although the housing authority did not prove that the tenant had any knowledge of the presence of the drugs in her apartment, the trial court entered a judgment evicting the tenant.

The appellate court affirmed the trial court's judgment of eviction, specifically rejecting the tenant's argument that the trial court erred in evicting her when the housing authority failed to prove that she had knowledge of the illegal drugs in her apartment or that she had control over the actions of her daughter's

acquaintance. As did the ***Guillory*** court, the appellate court found the lease provision's anti-drug language to be "clear and unambiguous." ***Green***, 657 So. 2d at 555. Upon examining this and other lease provisions, the court concluded that the lease contained no knowledge requirement:

> [W]here Section 15 of the lease refers to "a guest or other person under the tenant's control" it means that the tenant "controls" who has access to the premises. The lease makes the tenant responsible for the drug activities of those persons given access to the apartment by the

> tenant. "Control" as used in the lease in no way implies that the tenant knew or should have known of the drug activity, and there is no other provision in the lease that would make tenant knowledge of drug activity a necessary precondition of eviction.

Id. at 554. The court also refused to read such a knowledge requirement into the language of the Housing Act, as amended in 1988 and 1990, upon which the housing authority had based the subject provision. The court explained:

> Knowledge requirements in statutes are so common in general and so obviously relevant to this particular issue that we reject the argument that Congress either failed inadvertently to include a knowledge requirement, somehow included it by implication, or said "control" but really meant knowledge.

Id. (citing 42 U.S.C.A. § 1437d(l)).

In accordance with these authorities, we hold that the trial court properly entered summary judgment in favor of MHA in this unlawful detainer

action against Thompson. The lease provisions relied upon by MHA required Thompson to cause household members, guests, or persons under her control to refrain from any criminal activity that threatened the health, safety, or right to peaceful enjoyment of the premises by other tenants. In executing the lease and addendum, Thompson agreed that the activity prohibited by these provisions included any drug-related criminal activity on or off the premises. Thompson also acknowledged that any such criminal activity by a member of her household, a guest, or other person under her control would constitute good cause for termination of the lease and her tenancy.

The language of these provisions is clear and unambiguous. By signing the lease with MHA, Thompson agreed to cause her guests, such as Williams, to refrain from engaging in any drug-related criminal activity while on the premises. Thus, the lease provisions placed upon Thompson the affirmative obligation to ensure that her guests did not

engage in drug-related criminal activity while in her apartment. In light of the affirmative nature of this obligation, Thompson's actual or constructive knowledge of Williams' drug-related criminal activity was irrelevant. Regardless of her knowledge of Williams' drug activity, under the terms of her lease, Thompson became responsible for such activity once she granted Williams access to her apartment.

Even when viewed in the light most favorable to Thompson, the evidence presented below demonstrated that Thompson violated her lease with MHA when she granted Williams access to her apartment and subsequently failed to cause Williams to refrain from possessing illegal drugs while in the apartment. Under these circumstances, MHA had the right to enforce the lease provisions by evicting Thompson.

In contending that an eviction requires a showing of some degree of fault on the part of the tenant, Thompson cites authorities indicating (1) that a

housing authority should exercise its discretion in light of all the relevant circumstances when it decides whether to evict a tenant for criminal activity, (2) that the relevant circumstances include, ***inter alia***, the tenant's knowledge of the criminal activity and the tenant's efforts to prevent the activity, and (3) that the housing authority's decision is subject to review by the courts.

In its report accompanying the 1990 amendments to the Housing Act, for instance, the congressional committee included the following statements:

> The Committee anticipates that each case will be judged on its individual merits and will require the wise exercise of humane judgment by the [housing authority]

> and the eviction court. For example, eviction would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken reasonable steps under the circumstances to prevent the activity.

S. Rep. No. 101-316, at 179 (1990), ***reprinted in*** 1990 U.S.C.C.A.N. 5763, 5941. Moreover, a HUD regulation provides that, in deciding whether to evict for criminal activity, a housing authority

> shall have discretion to consider all of the circumstances of the

case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity. In appropriate cases, the [housing authority] may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will not reside in the unit.

24 C.F.R. § 966.4(l)(5)(i) (1998). Finally, HUD's "One Strike" policy contains the following statements:

> [Housing authorities] retain the flexibility to handle these cases on an individualized basis, and they should exercise reasonable discretion in light of all the relevant circumstances. In particular, when a tenant has taken all reasonable steps to prevent the criminal activity, eviction may not always be warranted or proper. To ensure both humane

> results and success in court, [housing authorities] should undertake a case-by-case analysis before proceeding with eviction. If they do seek eviction, [housing authorities] should be prepared to persuade a court that eviction is justified.

Syracuse Hous. Auth. v. Boule, 658 N.Y.S.2d 776, 780 (Syracuse City Ct. 1996) (quoting HUD's "One Strike and You're Out" statement of policy in public housing issued in March 1996), ***aff'd***, 676 N.Y.S.2d 741 (Onondaga County Ct. 1998). Relying upon these authorities, some courts have held that a tenant may be evicted for the drug-related criminal activity of a guest

or household member only if the tenant is personally at fault for the criminal activity, such as where the tenant had knowledge of the criminal activity or where the tenant failed to take reasonable steps to prevent the activity. ***See Charlotte Hous. Auth. v. Patterson***, 464 S.E.2d 68, 72 (N.C. Ct. App. 1995); ***see also Syracuse Hous. Auth. v. Boule***, 658 N.Y.S.2d 776, 780 (Syracuse City Ct. 1996), ***aff'd***, 676 N.Y.S.2d 741 (Onondaga County Ct. 1998).

We decline to adopt such a standard in this case. As we previously discussed, the language of the lease signed by Thompson was clear and unambiguous. The lease included no knowledge requirement but instead placed upon Thompson the affirmative obligation to cause her guests to refrain from engaging in illegal drug activity while on the premises. Moreover, the language of the Housing Act contained no such knowledge requirement. As one appellate court observed, "[t]hat a Congressional committee may not have intended for tenant evictions

to take place in the absence of knowledge, does not change the fact that when the Congress as a whole enacted [the 1990 amendments to the Housing Act] it did so without the imposition of a knowledge requirement." ***Housing Auth. of New Orleans v. Green***, 657 So. 2d 552, 554 (La. Ct. App.), ***writ denied***, 661 So. 2d 1355 (La. 1995), ***cert. denied***, 517 U.S. 1169 (1996).

We further note that, although HUD regulations appear to grant housing authorities the discretion to evict tenants based on the criminal activity of their guests or household members, courts and other legal authorities have begun to question the extent to which courts may review a housing authority's exercise of that discretion. In refusing to inquire into a tenant's knowledge of or ability to foresee the criminal activity of her son, for example, the Supreme Court of Minnesota opined that

[d]espite HUD's careful clarification of [housing authority] responsibilities, the regulations do not give courts similar discretion when hearing evictions involving the criminal acts of household members. Rather, when discussing the role of courts in such evictions, HUD regulations require only that courts provide due process. In light of HUD's careful crafting of the [housing authority's]

role in eviction decisions, HUD would likely have spelled out any additional supervisory responsibilities it wished courts to take. Thus, HUD regulations, while providing tenants access to trial courts, do not empower trial courts to consider external circumstances in eviction proceedings.

. . . .

. . . [A] lease is a form of contract.

Unambiguous contract language must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh. When a lease empowers a landlord to evict for certain actions, then the trial court shall determine ***de novo*** whether the facts alleged in the complaint are true and whether those facts, under the terms of the lease, support termination of the lease and eviction.

Minneapolis Pub. Hous. Auth. v. Lor, 591 N.W.2d 700, 703-04 (Minn. 1999) (footnotes omitted) (citing 24 C.F.R. § 966.4(l)(3)(v)(B)); ***see also*** William F. Maher, ***Wisdom Revisited: Judicial Intervention and the Exercise of Discretion in "Strict Liability" Public Housing Evictions***, J. Affordable Hous. & Community Dev. L., Spring 1998, at 218, 221-26.

Under this limited scope of review, the trial court's only role in this unlawful detainer action was to determine whether Williams engaged in drug-related criminal activity while he was on the premises as Thompson's guest and, thus, whether the lease provisions prohibiting such criminal activity were breached. In light of the parties' stipulation that Williams was arrested for possession of cocaine while in Thompson's apartment at her invitation, we conclude that the trial court properly entered summary judgment in favor of MHA.

The trial court's judgment is affirmed, and this cause is remanded for further proceedings

consistent with this opinion. Costs of this appeal are taxed to Ms. Thompson, for which execution may issue if necessary.

FARMER, J.

CRAWFORD, P.J., W.S. (Concurs)

HIGHERS, J. (Concurs)

IN THE CIRCUIT COURT OF TENNESSEE FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS, SHELBY COUNTY

MEMPHIS HOUSING AUTHORITY,

Plaintiff,

Docket # 94425-7 T.D.

vs.

TARA THOMPSON,

Defendant.

ORDER GRANTING SUMMARY JUDGMENT TO PLAINTIFF

This matter came to be heard on October 30, 1998, upon the motion of the plaintiff to reconsider

the court's previous ruling which denied plaintiff's motion for summary judgment; upon oral argument at which time it was pointed out that the court had failed to take into consideration the defendant's deposition in making its ruling, the court not being restricted to the written stipulation of facts in considering the motion for summary judgment; upon stipulations of counsel; upon considering the deposition of the defendant; and, from the entire record in this cause, from all of which it appears to the Court and the Court finds that:

Plaintiff is entitled to a summary judgment in its favor in this case. A writ of possession shall issue forthwith and Defendant shall pay the costs of the clerk of the general sessions court and the clerk of the circuit court.

For all of which, let execution issue.

_____

Judge Robert A. Lanier

DATE: _____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to: Gregory L. Perry, Esq., 700 Adams Avenue, Memphis, TN 38103 and Brenda Oats-Williams, Esq., 109 N. Main Street, Memphis, TN 38103, by U.S. Mail, postage prepaid, on this the __9__ day of November, 1998.

_____

DEPUTY CLERK

IN THE CIRCUIT COURT OF TENNESSEE

FOR THE

THIRTIETH JUDICIAL DISTRICT AT

MEMPHIS, SHELBY COUNTY

MEMPHIS HOUSING AUTHORITY,

Plaintiff,

vs.

Docket #94425-7 T.D.

TARA THOMPSON,

Defendant.

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This matter came on to be heard on August

28, 1998, upon the motion of the plaintiff for summary judgment; upon argument of counsel; upon briefs of counsel; upon affidavits in support of the motion; upon stipulations of counsel; and, from the entire record in this cause, from all of which it appears to the Court and the Court finds that:

For the purposes of this motion, the facts are as follows:

Defendant Tara Thompson lives in public housing with her three minor children. Tallen Williams is the father of Ms. Thompson's youngest child. On February 6, 1998, Ms. Thompson saw Mr. Williams on the grounds of the Fowler Homes Development. Mr. Thompson was not engaged in any gainful activity, so Ms. Thompson asked Mr. Williams to come to her apartment and watch his son and her two other children while she went to the laundry. He agreed and went to the apartment. While there, the Memphis Police Department, executing a warrant for his arrest, entered the

defendant's apartment, arrested Mr. Williams and thereupon found a small amount of cocaine in his possession and arrested him for possession of a controlled substance. Defendant did not know of his drug use until so informed by the police. The cocaine belonged to Mr. Williams. He later pleaded guilty to possession of a controlled substance. The plaintiff is a federally-subsidized public housing authority. The plaintiff has given Defendant notice to leave the premises and, upon her failure to do so, filed an action in the General Session Court for unlawful detainer. The matter has been appealed to this court. In this case, the court is called upon to construe the lease agreement between the plaintiff and the defendant. The pertinent part of that agreement requires the defendant to

> M. . . . cause other persons who are on the premises with the resident's consent to refrain from

illegal or other activity which impairs the physical or social environment of the development;

N. . . . refrain from and cause. . . guest [sic] from any criminal activity . . . which includes but is not limited to any drug related criminal activity . . . which includes but is not limited to any drug related criminal activity on or near such premises; . .

Paragraph 15 of the lease provides for its termination, and reads as follows:

15. . . . either of the following types of criminal activity by . . . a guest . . . shall be cause for termination of tenancy . . .

B. Any drug related criminal activity

on or near such premises, . . .

Plaintiff also signed an addendum to the lease; effective May 1, 1997, which amended Paragraph N of the lease to read as follows:

> N. To refrain from and cause . . . guests . . . from engaging in any criminal activity . . . which includes but is not limited to any drug related criminal activity on or off the premises;
> The term "drug-related criminal activity" means the illegal . . . possession with intent to . . . use, of a controlled substance . . . or any other illicit drug.
> The term "criminal activity"

shall mean an act that violates city, state or federal criminal laws.

The ordinary and usual meaning of the word "cause" as a verb is to make something happen. It refers to a positive, rather than passive behavior. According to *Black's Law Dictionary*, (Fourth Edition), a meaning of the word is "to effect, to bring about; to bring into existence." According to *Webster's Seventh New Collegiate Dictionary*, a primary meaning of the word is "to effect by command, authority or force." The word, therefore, denotes an affirmative duty upon the tenant to bring about the absence of drug possession on the leased property. This is consistent with the policy behind the addendum. The Memphis Housing Authority, on August 29, 1996, adopted a "zero tolerance" and, "one strike policy," for such behavior as allowing guests to possess illegal drugs on the

premises. The Memphis Housing Authority did, however purport to reserve to itself the "flexibility" to use discretion to decide whether termination of the lease was proper and to reach "humane" results, especially when a tenant "has taken all reasonable steps to prevent" the criminal activity. (Affidavit of Estelle Brooks). While the intent of the Memphis Housing Authority, alone, cannot govern the interpretation of the lease, it certainly shows the purpose of the addendum. "One strike," in baseball parlance means that, whereas the batter is "out" in baseball after three strikes, the tenant may be evicted after one "strike," or default, in the subject obligation.

It seems to be suggested by the defendant that such a lease provision, if so intended, would violate the intention of Congress, as expressed in the statute governing federally-assisted public housing and the regulations made pursuant thereto, and be, therefore, forbidden. However, the language of

neither the statute nor the regulations compels such a conclusion. The statute requires public housing authorities to inset terms in their leases that

> Provide that any criminal activity... or any drug-related criminal activity on or near such premises, engaged in by a . . . guest or other person under the tenant's control, shall be cause for termination of tenancy; . . . [42 U.S.C.A.§ 1437d(1)(5)].

Moreover, the regulation promulgated by HUD pursuant to the statute provides, in material part, that in their leases, tenants must

> . . assure that the tenant . . . a guest, or any person under tenant's control, shall not engage in: (B) any drug related criminal activity on or near such premises. [24

C.F.R.§966.4(f)(12)(I)(1993)].

The word "assure," once again, conveys a strict standard of responsibility. *Black's Law Dictionary,* (Fourth Edition), gives these definitions of "assure:"

> To make certain and put beyond doubt, ... Used interchangeably with insure in insurance law; in real property documents it means a warranty; . . .

The history of federal public housing legislation evidences a clear pattern of ever-increasing intolerance of any illegal drug activity by tenants or their guests, even when off the premises. [See 1996 Amendment to the Federal Housing Opportunity Program Extension Act, Section 9 (a) (6)]. The defendant quotes the following Senate Committee report language in the 1990 version of

the act in support of her position:

> This section would make it clear that criminal activity, including drug related criminal activity, can be cause for eviction only if it is adversely affects the health, safety, and quiet enjoyment of the premises. The committee anticipates that each case will be judged on its individual merits and will require the wise exercise of human judgment by the PHA and the eviction court. For example, eviction would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken reasonable steps under the circumstances to prevent the activity.

It is to be noted that the language above is from the Senate report on the 1990 Bill. The conference report of both Houses of Congress upon the final legislation contains the following report to Congress:

> The conference report contains the Senate provision amended to read that each public housing agency shall utilize leases which provide that *any criminal activity* that threatens the health, safety, or right to peaceful enjoyment to the premises by other tenants or *any drug-related criminal activity* on or near such premises engaged in by a public housing tenant, any member of the tenant's household, or *any guests* or any other person under the tenant's control, *shall be cause for termination of*

tenancy (emphasis added). (U.S. code Congressional and Administrative News, 101st Congress, 2nd Session, 1990, Volume 8, Page 6, 123).

It will thus be seen that the final version of the bill reported to the Congress does not contain the same language contained in the Senate Committee Report. The best evidence of the statutory purpose is the statutory text adopted by both Houses of Congress and submitted to the President. Where that statute is unambiguous, it should not be expanded or contracted by the statements of individual legislators or committees during the course of the enactment process. *West Virginia University v. Casey,* 499 U.S. 83 (1991).

It has been argued that a policy of strict liability would render a tenant subject to eviction if an appliance repairman with a marijuana cigarette in

his possession was summoned innocently by the tenant. *Syracuse Housing Authority v. Boule*; 172 Misc. 2d; 658 N.Y.S. 2d 776 (1996). In such a situation, the housing authority retains the discretion to consider whether the tenant had reasonable steps to prevent such an offence. It might just easily be argued that a tenant could escape eviction by making no investigation of, or remaining purposefully ignorant about her guests, even though they regularly carried quantities of drugs secreted upon their persons or had criminal records strongly indicating a propensity to pursue illegal activities.

A contract may not be interpreted so as to reach an absurd result. *Gibson v. International Harvester*, 557F. Supp. 1000 (P.C. Tenn. 1983). The intention of a contract must be gathered from the four corners of the instrument if possible. A literal interpretation of some of the clauses of the contract, quoted above, would make a tenant responsible for, and subject to eviction because of,

drug-related criminal activity by a person who had once been a guest of the tenant, long after he had left the tenant's premises. This would be an unreasonable interpretation of the express words of the contract. If that is not the meaning of the contract, then something less than an absolute and strict liability for the acts of former or present guests must be intended by the contract and the statute. Both the statute and the contract could have easily contained the terms, "regardless of fault," or, "strict liability." Neither term is used. This leads to the inference that some fault, however slight, upon the part of the tenant is intended to be required. It may be an act of omission or an act of commission. It may be the failure to make adequate inquiry as to the character, history, status, conditions, and activities of the guest, or failure to take precautions based upon information known to the tenant. It is obvious from the foregoing legislative history and contract terminology that the standard of fault upon the part

of the tenant would not be great and the burden of proof on the housing authority would be slight. While the terms of a written contract may not be varied or contradicted by oral evidence in a case of patent ambiguity, proof of the entire circumstances surrounding a contract and its execution may be considered to understand its intent. Contracts will be construed so as to avoid internal conflicts if possible. Where other rules of construction fail to give certainty to the written expression, doubtful language in the contract should be interpreted most strongly against the party who drew or prepared it. *Coble v. Gifford*, 627 S.W. 2d 359 (Tenn. App. 1982).

Applying the foregoing rules, the court concludes that, while the contract places a heavy burden upon a tenant to take an active role in preventing the use of the premises by guests of the tenant who are engaged in illegal or drug-related activity, an entirely innocent tenant, whose

ignorance of the activity is not due to indifference or lack of precautions on his or her part, should not be a basis for eviction.

The court notes that there is a deposition in the file which appears to contain testimony given by the defendant. However, no reference to the deposition is made in the written stipulation entered into by the parties or in the briefs of the parties. Therefore, the court does not consider that in deciding this motion. The motion is based entirely upon the facts contained in the stipulation and in the briefs of the parties. From these, insufficient basis for a summary judgment at this time is shown by the plaintiff.

WHEREFORE, plaintiff's motion for a summary judgment is overruled, and all other matters are reserved.

JUDGE ROBERT A. LANIER

DATE:_____

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to: Gregory L. Perry, Esq., 700 Adams Avenue, Memphis, TN 38103 and Brenda Oats-Williams, Esq., 109 N. Main Street, Memphis, TN 38103, by U.S. Mail, postage prepaid, on this the 2nd day of October, 1998.

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DEPUTY CLERK

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

MEMPHIS HOUSING AUTHORITY v. TARA THOMPSON

Circuit Court for Shelby County
No. 94425-T.D.-7

No. W1998-00108-SC-R11-CV

The Court has considered Memphis Housing Authority's petition to rehear and is of the opinion that the petition should be and hereby is DENIED.

However, we agree with Memphis Housing Authority that the opinion at page 11 incorrectly characterizes its assertions at oral argument. Accordingly, the opinion is corrected by withdrawing page 11 and substituting in its

stead-revised page 11, attached hereto. The revisions do not change the substantive analysis or the result of the opinion filed on February 20, 2001. Accordingly, the time for filing a petition to rehear does not begin anew.

PER CURIAM

allowing the public housing authority to consider the involvement or participation of family members, the HUD regulation also suggests a knowledge requirement.

Finally, while a standard of strict liability is sensible when it is applied to the resident or household members, such a standard yields absurd results when it is applied to guests or other persons.[3] For example, eviction would be possible where a salesman or a pizza delivery person enters a public housing tenant's apartment in possession of drugs, even though the tenant had no knowledge or information about the

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3 A tenant will have no trouble ascertaining the identities of those persons for whom the tenant will be held strictly liable if all public housing authorities use leases similar to this one which requires the tenant to list all household members by relationship, age, and social security number and obligates the tenant to notify the public housing authority within ten days of the date on which the composition of the family changes.

drug-related criminal activity. We do not believe Congress intended such an absurd result.

Accordingly, we conclude that neither federal law nor the lease provisions impose a standard of strict liability for the drug-related criminal activities of Thompson's guests or other persons under her control[4] The phrase "under the resident's control" permits eviction only if MHA establishes that Thompson knew or should have known of the drug-related criminal activity "of a guest or other person" and failed to take reasonable steps to prevent or halt it. Not only is this construction consistent with federal legislative history and HUD regulations, it is

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4 Having so concluded, we need not address Thompson's assertion that a standard of strict liability for the drug-related criminal activity of others would violate her constitutional substantive due process right. It is well-established that courts decide constitutional issues only when necessary. See State v. Burdin, 924 S.W.2d 82, 87 (Tenn. 1996); Owens v. State, 908 S.W.2d 923, 926 (Tenn. 1995).

consistent with Tennessee law which requires that ambiguous terms in a lease be construed against the drafter of the instrument, in this case MHA.

Under this standard, both the public housing authority and the eviction court will be required to carefully consider the facts when an eviction is sought because of the drug-related criminal activities of a guest or other person under the tenant's control. In determining whether a tenant knew or should have known of the illegal conduct, courts should consider whether the guest or other person had a prior criminal record and, if so, whether the tenant had notice of the prior criminal record. As the Massachusetts Supreme Court held, a tenant's duty to take reasonable steps to prevent or halt illegal activity may on occasion require the tenant to seek outside intervention from social services agencies or law enforcement officials. See Spence v. Gormley, 439 N.E.2d 741, 265 (Mass. 1982). When a tenant has taken such measures,

however, the tenant should not be held responsible for illegal activities that nevertheless occur. Id.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Public and Indian Housing

Special Attention of:

Under the Jurisdiction of the United States Court of Appeals for the Ninth Circuit:

Selected Public Housing Agencies, Public Housing Directors; State/Area Coordinators; Public Housing Resident Management Corporations; Assistant General Counsel; Chief Counsel; Chief Attorneys

NOTICE PIH 2001-8 (HA)

Issued: March 13, 2001

Expires: March 31, 2002

SUBJECT: Termination of Tenancy for Criminal Activity

Applicability: All Public Housing Agencies (PHAs) administering public housing within the jurisdiction of the United States Court of Appeals for the Ninth Circuit.

Applicable States and Possessions: California, Washington, Montana, Oregon, Idaho, Nevada, Arizona, Hawaii, Alaska and Northern Mariana Islands and Guam.

Policy: This notice is to advise PHAs of the effect of *Rucker v. Davis* on their ability to evict households from public housing on the basis of criminal activity committed by certain persons other than the public housing leaseholder (*i.e.*, the lease signatory). This decision by the United States Court of Appeals for the Ninth Circuit interpreted Section 6(1)(6) of the U.S. Housing Act of 1937, as amended, in a way that is contrary to HUD's

interpretation, which applied to all PHAs nationwide.

In promulgating the regulation at 24 CFR 966.4(f)(12), HUD determined that because Section 6(1) requires every lease signed by the tenant of a public housing unit to contain a provision authorizing his or her PHA to consider certain "criminal activity ... engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control" to be "cause for termination of tenancy", the lease provision authorizes the termination of the leasehold and thus eviction of all members of a household whenever such criminal activity is committed by any member of the household or by any household guest. 56 *Fed. Reg.* 51560, 51562-51563, 51566-51567 (October 11, 1991).

In a 7 to 4 decision, 237 F.3d 1113 (9th Cir. 2001), the Ninth Circuit rejected that interpretation. The majority opinion concluded that Congress

could not have intended that, when the criminal activity is committed by a household member or guest, a leasehold could be terminated without a showing of particularized leaseholder fault. The Court thus, in our opinion,1 read into the statute the following additional terms that would bar such a termination for criminal activity committed:

(a) **outside** the leaseholder's unit, absent PHA proof that the leaseholder failed to take "reasonable steps to prevent drug activity from occurring" in circumstances in which the leaseholder "knew or should have known of the criminal activity" and could "realistically exercise control over the conduct of [the] household member or guest"; and

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1 This is only HUD's understanding of the Ninth Circuit opinion. Each PHA should independently review the decision.

(b) **inside** the leaseholder's unit, if the leaseholder introduces evidence sufficient to overcome the legal "presumption" that because the unit is an area over which the leaseholder has control and with respect to which the leaseholder can grant or deny access, the leaseholder must have failed to take all requisite steps to prevent criminal activity from occurring there.

Because the decision is binding precedent within the Ninth Circuit, PHAs within the Ninth Circuit are instructed to disregard HUD's interpretation of Section 6(1)(6) and follow the Ninth Circuit interpretation of the statute.

____/s/_____

Gloria J. Cousar

Acting General Deputy Assistant

Secretary for Public and Indian Housing